STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 24, 1999
v	No. 207175 Tuscola Circuit Court
STEWART LELAND GAGNON, Defendant-Appellant.	LC No. 97-007164 FH

Before: Collins, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of violating the Sex Offenders Registration Act by failing to notify the local law enforcement agency of a change of address within ten days of the change. MCL 28.729; MSA 4.475(9). Defendant was also found to be a habitual offender, fourth offense. MCL 769.12; MSA 28.1084. He was sentenced to five to ten years in prison. Defendant now appeals and we affirm.

Defendant first argues that there was insufficient evidence to establish the willfulness element of the offense or, in the alternative, that the verdict was against the great weight of the evidence. Because defendant failed to move for a new trial, he has waived appellate review of the great weight of the evidence issue. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Therefore, we limit our review to determining whether there was sufficient evidence on the element of willfulness to sustain defendant's conviction.

We review a sufficiency of the evidence issue by looking at the evidence in the light most favorable to the prosecutor and determining whether a rational trier of fact could find that the essential elements were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

MCL 28.729(1); MSA 4.475(9) makes it a felony to willfully violate the Sex Offenders Registration Act. The act does not define the term "willfulness." However, the trial court instructed the jury, without objection by defendant, that "the prosecution must prove that the defendant intended to not notify the local law enforcement agencies of his new address." This is in accord with the definition

of "willful" in the Random House Webster's College Dictionary (2nd ed), p 1470, which defines it as "deliberate, voluntary, or intentional."

The crux of defendant's argument is that his failure is the result of mere forgetfulness or negligence, not intentional conduct. While the evidence could support such a conclusion, our role is limited to determining whether the jury could conclude that defendant acted willfully.

Viewing the evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence presented at trial for a rational trier of fact to find the "willfullness" element satisfied beyond a reasonable doubt. The prosecution presented evidence that defendant filled out and signed a registration form at the beginning of his sentence and prior to his release. Defendant was given copies of both forms, which undisputedly contained the ten-day provision. There was evidence that defendant was released on October 1, 1996, and that on October 15, 1996, he changed his driver's license address to reflect an address in Caro, in Tuscola County. There was evidence that between October 1996 and January 1997, the Tuscola County sex offenders registry listed defendant's address as 11475 Cranberry Lake Road, Bradley, Michigan. The state police trooper who stopped defendant on January 27, 1997, testified that the Cranberry Lake Road address was the address listed on the registry, although defendant told him that he was residing in Caro. Defendant admitted that he received both copies of the registration form, and that he knew he had to register a change of address.

We are satisfied that a rational trier of fact could conclude from the above evidence that defendant willfully failed to register his change of address within ten days as required by statute.

Defendant next argues that he was denied effective assistance of counsel because of defense counsel's failure to object to the prosecutor's characterization of the elements of the crime and for failing to move for a directed verdict. With respect to the failure to move for a directed verdict, because we conclude that there was sufficient evidence to support defendant's conviction, a directed verdict would have been denied. Therefore, defense counsel was not ineffective for failing to make a motion which would have been denied. *People v Darden*, 230 Mich App 597, 605; 585 NW2d 27 (1998).

As for failing to object to the mischaracterization of the elements of the crime, defendant points to instances in which the word "willfully" was omitted in describing the offense. Such omissions do not appear to be intentional and, in any event, any harm was cured in the trial court's jury instructions which clearly instructed the jury on the element of willfulness.

For the above reasons, we are not persuaded that defendant was denied the effective assistance of counsel.

Finally, defendant argues that the trial court abused its discretion in sentencing defendant. We disagree.

We review defendant's sentence under the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Defendant is a fourth felony offender. He reoffended less than one month after his release from custody.[1] Defendant complains that the trial court improperly

considered his prior criminal sexual conduct conviction and not the current conviction. First, we do not see where the trial court gave consideration of the prior conviction to the exclusion of the current conviction. Second, defendant was being sentenced as a habitual offender and, in our view, consideration of his prior offenses is appropriate. Third, if it were not for defendant's prior criminal sexual conduct conviction, he would not be subject to the registration act in the first place.

In sum, we are not persuaded that defendant's sentence is disproportionate.[2]

Affirmed.

/s/ Jeffrey G. Collins
/s/ David H. Sawyer
/s/ Mark J. Cavanagh

[1] Defendant was released on October 1, 1996. He moved no later than October 15, the date he filed the change of address on his driver's license. Thus, he was obligated to file his change of address for the sex offender registry by October 25, less than a month after his release.

[2] Defendant also states, without citation to authority, that his sentence is excessive because the minimum exceeds the maximum permitted by statute. Defendant's argument is based upon the premise that the habitual offender statute only allows the enhancement of the maximum sentence. The minimum sentence, defendant argues, is limited to the maximum allowed under the unenhanced statute. Defendant cites no authority for this principle and we are aware of no such authority for this proposition.